

Developmental Disabilities Council
Reading Cover Page

Date: September 22, 2006

Meeting: Full Council

Reading Number: 06-04

Issue: WPAS Presentation on the GR
Lawsuit settlement

Included in this reading:

Materials related to the GR Lawsuit
Settlement

For more information please contact Mark
Stroh at WPAS.

GR versus Department of Social and Health Services (DSHS)
A lawsuit filed by the Washington Protection & Advocacy System

Questions & Answers Related to the GR Settlement

What does GR mean?

GR are the initials of a person with a developmental disability who was represented in a lawsuit filed in federal court by the Washington Protection and Advocacy System.

What was the problem that led to the *GR v. DSHS* lawsuit?

The DSHS Division of Developmental Disabilities (DDD) was sending planned action notices stating their intent to reduce or eliminate services to people with developmental disabilities. Some of the people receiving the notices did not have the ability to understand what the notices meant, did not have the ability to understand they had the right to appeal the reduction or elimination of services, and did not have legal guardians to act on their behalf.

What are the rights of people with developmental disabilities in this situation?

People to whom DDD is going to send planned action notices have rights. If the people do not have the ability to understand the notices, DDD has some very specific duties. These includes providing accommodations to help them understand the notices and exercise their due process rights including the right to appeal. These rights are firmly established in both federal and state law. See the attached table of federal court cases (green) and RCW 71A.10.060 (yellow) which has been in effect since 1989.

What is the most significant outcome of the GR Settlement?

People with developmental disabilities who receive a planned action notice reducing or terminating their DDD services will receive accommodations, if they want or need them, to help them understand the notices and/or file appeals to stop the reduction or termination of services.

How will the person who provides the accommodations be chosen?

The process is spelled out in DDD Policy 5.02 – Necessary Supplemental Accommodation (see blue attachment). This policy existed before the GR settlement but it was revised to make sure that appropriate accommodations for matters related to the planned action notice would be available to all the people who needed or wanted them and that their DDD services would remain in place while they exercised their due process rights.

What services related to the planned action notice can the accommodation person provide?

The kind of services the accommodation person can provide are spelled out in WAC 388-472-0010 and can be found on page 5 of DDD 5.02 (see blue attachment). The language in this WAC is the same as it was before the GR Settlement.

Can people with developmental disabilities choose who provides them the accommodations related to the planned action notices?

Yes. But the person chosen must be willing to accept this role.

What happens if no one can be found to provide the accommodations?

The State can seek a limited guardian to act on matters related to the planned action notice or decide not to pursue the reduction or elimination of DDD services. If the State chooses to seek a limited guardianship, the person with the developmental disability will have all the due process protections in the guardianship law – the same protections they had before the GR Settlement.

Do people with the developmental disabilities have to accept the accommodations?

No. But if the State believes a person with a developmental disability is unable to understand the notice and needs accommodations in order protect his or her due process rights, the person with the developmental disability may have to ask for an administrative hearing in order to turn down the help. The way to do this is the same as it was before the GR Settlement. It is part of RCW 71A.10.060.

Attachments

Table of federal court cases involving issues related to *GR v. DSHS* (green)
RCW 71A.10.060 (yellow)
DDD Policy 5.02 Before GR (goldenrod)
DDD Policy 5.02 After GR (blue)
U.S District Court Ronald Leighton's Order in *GR v. DSHS* (tan)

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FEDERAL COURT CASES RELATED TO GR

No.	Case Name and Cite	Case Description and Holding
	<i>Vance v. Fed. Nat'l Mortgage Ass'n</i>, 1999 OK 73, 988 P.2d 1275, 1280-81(Okla. Sept. 21,1999)	Where notice of foreclosure was served on incompetent woman with paranoid schizophrenia who did not have a legal guardian, issue whether notice was violative of woman's due process rights turned on whether defendants were aware of her incompetency.
2	<i>In the Matter of County Collector</i>, 188 Ill. App.3d 1068, 1076-77, 545 N.E.2d 145, 150, 136 Ill. Dec. 621, 626 (1989)(Notice of sale of land due to failure to pay tax served on an incompetent landowner was unconstitutional because it was "not reasonably calculated to apprise" the incapacitated landowner of the sale and no attempts were made by the purchaser of the land or the County to have a guardian appointed to represent her.
3	<i>Loundsberry by and through Loundsberry v. Hull</i>, 144 Misc. 2d 707, 712, 545 N.Y.S.2d 255 (1989)	Notice of land foreclosure sale for failure to pay taxes on man known by the community to be incompetent, was constitutionally inadequate, although the notice met the state statutory requirements, because he was incompetent to understand the notice.
4	<i>Blum v. Stone (v. Scaduto)</i>, 127 A.D. 2d 549, 511 N.Y.S.2d 638 (Feb. 2,1987)	New York appellate court, relying on <i>Covey</i> , held that the trial court erred when it refused to allow evidence of the woman's incompetency to understand the notice of a land foreclosure to determine whether the notice was constitutionally sufficient.
5	<i>In re Consol. Return of Tax Claim Bureau of the Del. County</i>, 75 Pa. Cmwlt. 108, 114, 461 A.2d 1329 (1983)	"To give notice to a person who cannot comprehend it through no fault of that person is a 'mere gesture' which would not afford notice required to satisfy the due process requirements of the United States Constitution..."
6	<i>Udd v. Massanari</i>, 245 F.3d 1096 (9th Cir. 2001)	Notice constitutionally deficient where man, due to his symptoms of schizophrenia, could not understand the notice or meaningfully act to appeal and had no legal guardian.
7	<i>Evans v. Chater</i>, 110 F.3d 1480, 1483 (9th Cir. 1997)	Where disability benefits applicant shows that he was incompetent at the time they received notice of denial or termination of benefits "implicate[s] a due process right [either] to a meaningful opportunity to be heard."
8	<i>Byam v. Barnhart</i>, 336 F.3d 172, 183(2d Cir. 2003)	Vacating and remanding district court's finding that notice to mentally impaired woman was constitutionally adequate, where district court did not review evidence of impairment of her ability to "understand and pursue administrative and legal procedures."

No.	Case Name and Cite	Case Description and Holding
	<i>Stieberger v. Apfel</i> , 134 F.3d 37, 40-41 (2 nd Cir. 1997)	When a disability benefits claimant, based upon particularized claims of mental impairment, is unable to understand the notice and act upon it, such notice violates due process.
10	<i>Young v. Bowen</i> , 858 F.2d 951, 954-956 (4 th Cir. 1988)	Issue of whether claimant had the mental capacity to timely request a review of denial of benefits was determinative of whether claimant's due process rights violated.
11	<i>Elchediak v. Heckler</i> , 750 F.2d 892 (11 th Cir. 1985)	Mentally ill claimant may raise due process claim in SSI case where mental disability impaired his ability to timely appeal a denial of benefits.

Notice by secretary.

(1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in subsections (1) and (2) of this section. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent.

[1989 c 175 § 139; 1988 c 176 § 106.]

Notes:

Effective date -- 1989 c 175: See note following RCW 34.05.010.

DDD POLICY 5.02 BEFORE GR



DIVISION OF DEVELOPMENTAL DISABILITIES Olympia, Washington

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

Authority: Section 504 of the Rehabilitation Act of 1973
 Title II, Americans with Disabilities Act
 RCW 71A.10.060(1), (2)
 WAC 388-472-0010; 0020(1); 0040

PURPOSE

This policy establishes procedures for promoting equal access to services from the Division of Developmental Disabilities (DDD).

SCOPE

This policy applies to DDD employees who provide programs and services to adult applicants or eligible persons with developmental disabilities. This policy does not apply to children because a parent or legal representative always represents them.

POLICY

Under DSHS rules, persons with developmental disabilities are eligible for "Necessary Supplemental Accommodation" (NSA) services, designed to afford them equal access to departmental services. DDD will promote policies, procedures, and practices that foster equal access to persons with disabilities.

PROCEDURES

A. Persons Who Are Not Class Members in the *Allen And Marr* Cases

1. Ask the applicant or client to identify significant others he/she would like included in written notifications. For DDD eligible persons, include these people as "significant others" in the Common Client Database (CCDB) with contact information (i.e., mailing address, legal relationship, and phone number).

2. For DDD eligible adults, write an accommodation plan in the person's Plan of Care (POC) or Individual Service Plan (ISP):
 - a. When the person has a representative (i.e., legal guardian, parent, or provider) available to assist with accessing services that will serve as the accommodation plan, enter the representative's name and contact information in the POC/ISP.
 - b. When the person has no representative or chooses to represent him/herself, then NSA accommodations must be evaluated and addressed in the POC/ISP. Examples of accommodations include needing:
 - i. Someone to read and/or explain information;
 - ii. Written material in large print or another language; and
 - iii. Help understanding information and accessing services.
3. Provide help with completing forms and explain the forms and processes.
4. Provide written information and notification to the eligible person and at least one other person in the person's primary language and in a manner that can be understood by the person.
5. Explain appeal rights and how to file an appeal, if requested to do so.
6. Call or meet with the person prior to the mailing of any notice of denial, reduction, or termination of eligibility or services, explaining the reason and the person's right to appeal.
7. When other department services are needed, refer the person to another advocate or agency for help with accessing and advocating for all needed services.

B. Persons Who Are Class Members in the *Allen* and *Marr* Cases

Prior to sending any Allen or Marr class member any official notification regarding the review, termination or denial of DDD eligibility, Home and Community Based Services (HCBS) waiver status, or the termination of DDD services:

1. DDD will contact the Washington Protection Advocacy Service (WPAS) Director of Legal Advocacy or his/her designee by telephone or email to inform him/her of the official department communication being sent to the class member.

WAC 388-472-0040: *What are the department's responsibilities in giving NSA services to me?* "All of our staff are continually responsible to identify you as possible NSA eligible and assist you with NSA services."

RCW 71A.10.060 (1) and **WAC 388-825-100** require that when DDD gives notice to the person with a developmental disability that the notice also is given to at least one other person. The order of these persons by priority is listed in this RCW.

RCW 71A.10.060 (2) requires that notice to a person with a developmental disability be "given in a way that the person is best able to understand. This can include reading or explaining the materials to the person."

EXCEPTIONS

Any exceptions to this policy must have the prior written approval of the Division Director.

SUPERSESSION

DDD Policy 5.02
Issued November 30, 2004

DDD Policy 5.02
Issued June 25, 2004

DDD Policy 5.02
Issued August 11, 2003

Approved: /s/ Linda Rolfe
Director, Division of Developmental Disabilities

Date: April 5, 2005

2. When DDD sends official notification to any Allen or Marr class member residing in the state hospital, the Case Resource Manager (CRM) will notify the DDD Mental Health CRM. The DDD Mental Health CRM will do all of the following:
 - a. Notify Eastern State Hospital/Western State Hospital staff in person or by telephone of the official notification being sent.
 - b. Coordinate with the Western State Hospital or Eastern State Hospital Habilitative Mental Health Program Manager to ensure that the class member's hospital treatment team is aware that the notification being sent to the class member. Also identify the hospital staff who will receive the notice on behalf of the class member.
 - c. Be available as necessary to assist in the support of the class member receiving this important information.
 - d. Work closely with the class member, his/her legal representative, WPAS, and other appropriate department staff providing services to the class member.

GOVERNING DSHS RULES AND DEFINITIONS

WAC 388-472-0010: *What are necessary supplemental accommodation services (NSA)?*

"Necessary supplemental accommodation (NSA) services are services provided to you if you have a mental, neurological, physical or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

NSA services include, but are not limited to:

- (1) Arranging for or providing help to complete and submit forms to us;
- (2) Helping you give or get the information we need to decide or continue eligibility;
- (3) Helping you request continuing benefits;
- (4) If you miss an appointment or deadline, contacting you about the reason before we reduce or end your benefits;
- (5) Explaining to you the reduction in or ending of your benefits;
- (6) If we know you have a person who helps you with your applications, notifying them when we need information or when we are about to reduce or end your benefits;
- (7) Assisting you with requests for fair hearings;
- (8) Providing protective payments if needed; and
- (9) On request, reviewing our decision to terminate, suspend or reduce your benefits."

WAC 388-472-0020(1) *We identify you as "NSA" if you: (c) Have a developmental disability.*



DDD POLICY 5.02 AFTER GR

DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

Authority: Section 504 of the Rehabilitation Act of 1973
 Title II, Americans with Disabilities Act
 RCW 71A.10.060(1), (2)
 WAC 388-472-0010; 0020(1); 0040
 WAC 388-825-100

PURPOSE

This policy establishes procedures for promoting equal access to eligibility and services from the Division of Developmental Disabilities (DDD) and to the appeal process for DDD eligibility, service, and provider decisions.

SCOPE

This policy applies to DDD employees who:

1. Provide information and/or services to applicants or clients of the Division of Developmental Disabilities; and/or
2. Determine decisions for clients who have appeal rights eligibility termination, service denial, reduction, or termination, and denial of provider of choice.

POLICY

DDD will promote policies, procedures, and practices that foster equal access to services for applicants and clients.

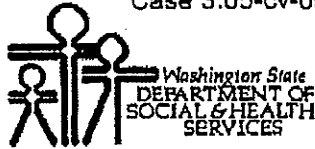
1. Under DSHS rules, applicants and clients eligible for "Necessary Supplemental Accommodation" (NSA) services, designed to afford them equal access to department services; and
2. DDD clients are entitled to a representative who is willing to receive copies of Planned Action Notices (PAN) of eligibility decisions; reduction, denial, or termination of services; denial or termination of provider of choice, and assist them with understanding and exercising their appeal rights.

DDD POLICY MANUAL

CHAPTER 5
1 OF 6

ISSUED 3/06

Attachment 1



DDD POLICY 5.02 AFTER GR

DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

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DDD POLICY MANUAL	CHAPTER 5 1 OF 6	ISSUED 3/06
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TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

PROCEDURES

A. For all currently eligible DDD clients:

1. There must be a representative documented in the record and confirmed prior to initiating any action that results in a decision with appeal rights (DDD eligibility, service eligibility or amount, termination or denial of provider of choice).

Complete the following steps prior to initiating any of the above actions and document these steps in the client's Service Episode Record (SER):

- a. Review "significant others" in the Common Client Data Base (CCDB) and NSA information in CARE to identify the current NSA representative. Use WAC 388-825-100(2) to help determine the NSA representative.
 - i. If none is listed in the client record, ask the client for her/his choice of representative.
 - ii. The NSA representative cannot be a department employee or a contractor of DSHS unless he/she meets the criteria of WAC 388-825-100(2).
 - iii. The Washington Protection and Advocacy System (WPAS) will be the NSA for Allen/Marr members currently in the state hospital when:
 - (a) There is no one else, and
 - (b) The issue is an eligibility review.
- b. Contact the identified NSA representative:
 - i. Confirm that the person agrees to accept the DDD notices sent to the client and understands their responsibility to assist the eligible person to understand the decision and appeal rights.
 - ii. Confirm the mailing address and phone and ensure the CCDB and CARE record have this current information.
 - iii. Document this contact in the CARE SER.
- c. Include the NSA representative(s) as the primary "significant other" with mail contact (i.e., mailing address, phone number, and legal relationship) in the CCDB.
- d. In the CARE assessment, mark "Yes" for the NSA question (on the last screen of the assessment) and:

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

- i. Enter the name of the NSA representative in the "Comments" box; and
 - ii. Enter the NSA representative's name, address, and phone number as a collateral contact in CARE demographics.
 - c. When the eligible person has no NSA representative for any of the following reasons, consult with the Assistant Attorneys General (AAG) when:
 - i. There is no one available to act as the NSA representative; or
 - ii. The client objects to the person that is identified; or
 - iii. The client objects to the appointment of anyone to act as their NSA representative.
 - f. Do not initiate an eligibility review, assessment/reassessment of services, reduce or terminate an existing service, deny or terminate a provider until *an NSA representative is identified, or the AAG agrees that the person is competent and no NSA representative is required.* Enter the reason for delay in the SER.
 - i. Continue current services until the NSA issue is resolved.
 - ii. If immediate emergency services are authorized, no action can be taken to reduce or terminate those services until an NSA representative is identified.
2. For DDD clients, write an accommodation plan in the person's service plan or SER.
- a. When the client has an NSA representative available to assist with accessing services, enter the representative's name and contact information in the Plan of Care/Individual Service Plan. The identification of an NSA representative is the accommodation plan.
 - b. For clients without an NSA representative and determined by the AAG as not requiring one, the NSA accommodations must be evaluated and addressed in the service plan or SER. Examples of accommodations include needing:
 - i. Someone to read and/or explain information;
 - ii. Written material in large print or another language; and

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

iii. Help understanding information and accessing services.

B. Applicants and clients will receive the following accommodations:

1. Help with completing and understanding forms and processes.
2. The PAN will be sent to the client and her/his representative in the person's primary language and in a manner that can be understood.
3. Prior to mailing any PAN, call the NSA representative or applicant/client and explain the decision, the PAN, and the appeal rights.

C. Persons Who Are *Allen* and *Marr* Class Members

The following procedures are in addition to A and B above:

1. Prior to sending any *Allen* or *Marr* class member a PAN, DDD will contact the WPAS Director of Legal Advocacy or his/her designee by telephone or email to inform him/her of the official department communication being sent to the class member.
 - a. WPAS will be the NSA representative if no else is available for class members residing in WSH or ESH, if the issue is DDD eligibility.
 - b. WPAS does not agree to be the NSA representative for any clients other than *Allen*/*Marr* class members who are not currently in WSH or ESH and whose eligibility is being reviewed.
2. When DDD sends a PAN to any *Allen* or *Marr* class member residing in a state hospital, the Case Resource Manager (CRM) will notify the DDD Mental Health CRM. The DDD Mental Health CRM will do all of the following:
 - a. Notify the appropriate Eastern State Hospital (ESH)/Western State Hospital (WSH) social worker in person or by telephone that the PAN is being mailed in care of an identified hospital staff representative.
 - b. Coordinate with the appropriate ESH/WSH social worker and hospital unit program manager to ensure that the class member's hospital treatment team is aware that the PAN is being sent. Also identify the hospital staff who will receive the PAN on behalf of the class member.
 - c. Be available as necessary to assist in the support of the class member receiving this important information.

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

- d. Work closely with the class member, his/her legal representative, WPAS, and other appropriate department staff providing services to the class member.

GOVERNING DSHS RULES AND DEFINITIONS

WAC 388-472-0010 What are necessary supplemental accommodation services (NSA)?

"Necessary supplemental accommodation (NSA) services are services provided to you if you have a mental, neurological, physical or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

NSA services include, but are not limited to:

- (1) Arranging for or providing help to complete and submit forms to us;
- (2) Helping you give or get the information we need to decide or continue eligibility;
- (3) Helping you request continuing benefits;
- (4) If you miss an appointment or deadline, contacting you about the reason before we reduce or end your benefits;
- (5) Explaining to you the reduction in or ending of your benefits;
- (6) If we know you have a person who helps you with your applications, notifying them when we need information or when we are about to reduce or end your benefits;
- (7) Assisting you with requests for fair hearings;
- (8) Providing protective payments if needed; and
- (9) On request, reviewing our decision to terminate, suspend or reduce your benefits."

WAC 388-472-0020(1) We identify you as "NSA" if you: (c) Have a developmental disability.

WAC 388-472-0040 What are the department's responsibilities in giving NSA services to me?

"All of our staff are continually responsible to identify you as possible NSA eligible and assist you with NSA services."

RCW 71A.10.060 (1) and WAC 388-825-100 require that when DDD gives notice to the person with a developmental disability that the notice also is given to at least one other person. The order of these persons by priority is listed in this RCW and WAC.

RCW 71A.10.060 (2) requires that notice to a person with a developmental disability be "given in a way that the person is best able to understand. This can include reading or explaining the materials to the person."

WAC 388-825-103 When will I receive written notice of decisions made by DDD?

You will receive written notice from DDD of the following decisions:

- (1) The denial or termination of eligibility;

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

- (2) The authorization, denial, reduction, or termination of services or the payment of SSP chapter 388-827 WAC that are authorized by DDD;
- (3) The admission or readmission to, or discharge from a residential habilitation center.

EXCEPTIONS

Regional Administrators or designees can approve exceptions to authorize an emergency service when there is no identified NSA representative.

SUPERSESSION

DDD Policy 5.02
Issued April 5, 2005

DDD Policy 5.02
Issued November 30, 2004

DDD Policy 5.02
Issued June 25, 2004

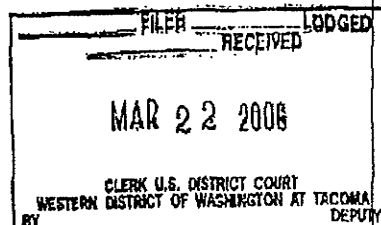
DDD Policy 5.02
Issued August 11, 2003

Approved: _____
Director, Division of Developmental Disabilities

Date: _____

Hon. Ronald B. Leighton

05-CV-05420-ORD



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

G.R., by his next friend and stepmother, CHERYL
WINNEY, and the WASHINGTON PROTECTION
AND ADVOCACY SYSTEM,

No. C05-5420-RBL

Plaintiffs,

v.

STATE OF WASHINGTON DEPARTMENT OF
SOCIAL AND HEALTH SERVICES;

ORDER
[Proposed]

ROBIN ARNOLD WILLIAMS, in her official
capacity as Secretary for the State of Washington
Department of Social and Health Services;

LINDA ROLFE, in her official capacity as the
Director of the Division of Developmental
Disabilities,

Defendants.

This matter having come before the Court upon the Joint Motion of the parties in the
above-captioned matter, and after having considered the court file and the Settlement Agreement
reached by the parties in this matter, the Court finds that this Agreement is a proper and just
resolution of the disputed claims raised in the above-captioned matter. It is therefore
ORDERED, ADJUDGED, and DECREED that:

- A. Implementation of the Revised Division of Developmental Disabilities Necessary
Supplemental Accommodations Policy 5.02

[Proposed] Order - 1
C05-5420

Washington Protection & Advocacy System
315 5TH Avenue South, Suite 850
Seattle, Washington 98104
(206) 324-1521 • Fax: (206) 957-0729

1. Immediately upon the entry of this Order, Defendants and Plaintiffs shall take all steps necessary to comply with this Order and to implement the Division of Developmental Disabilities (DDD) Necessary Supplemental Accommodations (NSA) Policy 5.02 attached hereto and incorporated herein as Attachment 1.
2. If a determination is made by Defendants that an individual has no NSA representative, as set forth in Paragraph A1(d) in the attached DDD NSA Policy 5.02, and that the individual is not competent to understand and act upon the planned action notice or correspondence that DDD is planning to provide to the individual, Defendants will seek a guardianship for the individual for the purposes of assisting the person to receive and act upon the planned action notice or correspondence from DDD. Wherever appropriate, Defendants will seek a limited guardianship to achieve these narrow purposes.
3. For members of the classes certified in *Allen, et al. v. Western State Hospital, et al.* and *Marr, et al. v. Eastern State Hospital, et al.*, who are hospitalized at either Western State Hospital or Eastern State Hospital, who do not have NSA representatives, prior to taking any action with regard to service of the planned action notices or correspondence on these class members, Defendants shall contact the Washington Protection and Advocacy System's (WPAS) legal director or her or his designee. If the planned action is an eligibility review, WPAS agrees to act as the NSA representative when no other NSA representative can be ascertained. For all other planned actions, WPAS shall serve as the NSA representative for the individual when it has the available resources to do so. In those cases, the WPAS legal director or her or his designee shall be solely responsible for determining whether WPAS has the resources to be the NSA representative for the hospitalized *Allen* or *Marr* class member.

If the WPAS legal director or her or his designee determines that WPAS does not have the resources to be the NSA for the hospitalized *Allen* or *Marr* class member, the WPAS legal director or her or his designee shall advise the relevant DDD representative who made the request of WPAS for NSA representation in writing of this decision. Upon receipt of this written decision from WPAS, DDD shall refer the matter for consultation with the Office of the Attorney General as required by Paragraph A1(d) of the DDD NSA Policy 5.02, attached hereto. If necessary, Defendants will seek a guardianship for the individuals to assist them in receiving and acting upon the DDD planned action notice or correspondence.
4. Within 45 days or by May 1, 2006, whichever date is later, Defendants shall provide the necessary training on the implementation of the DDD NSA Policy 5.02, referenced above in paragraph one, for all relevant employees of DDD
5. Within 45 days or by May 1, 2006, whichever date is later, Defendants shall provide Plaintiffs' counsel with a copy of all training materials used to provide the training to relevant DDD employees regarding the implementation of DDD NSA Policy 5.02, as described above in paragraph two.

B. Monitoring of the Implementation of DDD NSA Policy 5.02

1. WPAS shall monitor Defendants' implementation of DDD NSA Policy 5.02 for a period of three years from the entry of this Order.
2. In order to facilitate WPAS' monitoring of the implementation of DDD NSA Policy 5.02, Defendants shall provide to WPAS, on a quarterly basis during the three year monitoring period, access to DDD client records of a 10% random sample of all individuals who received eligibility termination notices from DDD statewide. The first 10% random sample will be provided to WPAS in August of 2006.
3. For the duration of the three year monitoring period described above in paragraph B.1., Defendants will provide the names to WPAS of all individuals for whom they received consultation referrals pursuant to Paragraph A1(d) of DDD NSA Policy 5.02, attached hereto and incorporated herein. This information will be provided to WPAS on a monthly basis.
4. For the duration of the three year monitoring period described above in paragraph B.1., Defendants will provide the names to WPAS of all individuals for whom they sought consultation pursuant to Paragraph A1(d) of the DDD NSA Policy 5.02, attached hereto and incorporated herein, and for whom they sought guardianship. This information will be provided to WPAS on a monthly basis.
5. Defendants shall audit, on a state-wide basis, their compliance with implementation of DDD NSA Policy 5.02 as part of their yearly Quality Control Compliance audits.

C. Dispute Resolution

1. In the event of a dispute over the implementation of this Agreement, the parties will make every effort to resolve the dispute informally. Should informal negotiation prove unsuccessful, the parties agree to seek resolution of the dispute through mediation, with both sides sharing equally in the costs of the mediation.
2. If in the opinion of the mediator the parties are unable to resolve their differences through that process, any party may seek resolution through the U.S. District Court for the Western District of Washington.

D. Fees and Costs

1. Defendants and Plaintiffs shall be responsible for their own attorney's fees associated with this case. Defendants agree to pay Plaintiffs \$9540.00 in full payment for costs associated with Plaintiffs' retention of an expert in this case

1 E. Nothing in this Order shall be deemed to limit:

- 2 1. The Court's authority with respect to contempt or any other authority possessed
3 by this Court;
- 4 2. The ability of any individual WPAS constituent to seek relief of any kind to
5 which otherwise be entitled under federal and state law;
- 6 3. The ability of the Washington Protection and Advocacy System to fulfill its
7 federal mandates pursuant to the Developmental Disabilities Assistance and Bill
8 of Rights Act, 42 U. S. C. § 15041, *et seq.* and the regulations promulgated
9 thereto.

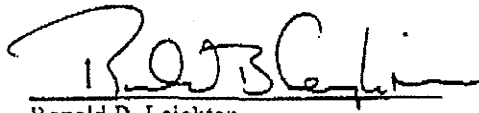
8 D. Dismissal of Claims

9 This Order and the attached DDD NSA Policy 5.02 attached hereto as Attachment 1
10 constitutes final dismissal with prejudice of claims for relief in the above-captioned action.

11 E. Settlement Binding

12 This Order shall be binding on all parties and any of their successors in interests, assigns,
13 agents, or offices.

14 DATED this 22nd day of March, 2006.

15
16 
17 Ronald B. Leighton
18 United States District Court Judge

19 Presented by:

20 WASHINGTON PROTECTION & ADVOCACY
21 SYSTEM

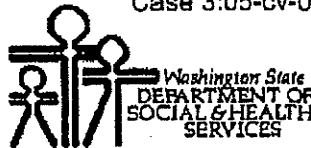
22 s/Deborah Dorfman
23 Deborah A. Dorfman, WSBA # 23823
Attorney for Plaintiff

1 ROB MCKENNA
2 Attorney General

3
4 s/Bruce Work (signed with electronic approval)
5 Bruce Work, WSBA #33824
6 Edward Dee, WSBA #15964
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[Proposed] Order - 5
C05-5420

Washington Protection & Advocacy System
315 5TH Avenue South, Suite 850
Seattle, Washington 98104
(206) 324-1521 • Fax: (206) 957-0729



DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

Authority: Section 504 of the Rehabilitation Act of 1973
Title II, Americans with Disabilities Act
RCW 71A.10.060(1), (2)
WAC 388-472-0010; 0020(1); 0040
WAC 388-825-100

PURPOSE

This policy establishes procedures for promoting equal access to eligibility and services from the Division of Developmental Disabilities (DDD) and to the appeal process for DDD eligibility, service, and provider decisions.

SCOPE

This policy applies to DDD employees who:

1. Provide information and/or services to applicants or clients of the Division of Developmental Disabilities; and/or
2. Determine decisions for clients who have appeal rights eligibility termination, service denial, reduction, or termination, and denial of provider of choice.

POLICY

DDD will promote policies, procedures, and practices that foster equal access to services for applicants and clients.

1. Under DSHS rules, applicants and clients eligible for "Necessary Supplemental Accommodation" (NSA) services, designed to afford them equal access to department services; and
2. DDD clients are entitled to a representative who is willing to receive copies of Planned Action Notices (PAN) of eligibility decisions; reduction, denial, or termination of services; denial or termination of provider of choice, and assist them with understanding and exercising their appeal rights.

DDD POLICY MANUAL	CHAPTER 5 1 OF 6	ISSUED 3/06
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TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

PROCEDURES

A. For all currently eligible DDD clients:

1. There must be a representative documented in the record and confirmed prior to initiating any action that results in a decision with appeal rights (DDD eligibility, service eligibility or amount, termination or denial of provider of choice).

Complete the following steps prior to initiating any of the above actions and document these steps in the client's Service Episode Record (SER):

- a. Review "significant others" in the Common Client Data Base (CCDB) and NSA information in CARE to identify the current NSA representative. Use WAC 388-825-100(2) to help determine the NSA representative.
 - i. If none is listed in the client record, ask the client for her/his choice of representative.
 - ii. The NSA representative cannot be a department employee or a contractor of DSHS unless he/she meets the criteria of WAC 388-825-100(2).
 - iii. The Washington Protection and Advocacy System (WPAS) will be the NSA for Allen/Marr members currently in the state hospital when:
 - (a) There is no one else, and
 - (b) The issue is an eligibility review.
- b. Contact the identified NSA representative:
 - i. Confirm that the person agrees to accept the DDD notices sent to the client and understands their responsibility to assist the eligible person to understand the decision and appeal rights.
 - ii. Confirm the mailing address and phone and ensure the CCDB and CARE record have this current information.
 - iii. Document this contact in the CARE SER.
- c. Include the NSA representative(s) as the primary "significant other" with mail contact (i.e., mailing address, phone number, and legal relationship) in the CCDB.
- d. In the CARE assessment, mark "Yes" for the NSA question (on the last screen of the assessment) and:

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

- i. Enter the name of the NSA representative in the "Comments" box; and
 - ii. Enter the NSA representative's name, address, and phone number as a collateral contact in CARE demographics.
 - c. When the eligible person has no NSA representative for any of the following reasons, consult with the Assistant Attorneys General (AAG) when:
 - i. There is no one available to act as the NSA representative; or
 - ii. The client objects to the person that is identified; or
 - iii. The client objects to the appointment of anyone to act as their NSA representative.
 - f. Do not initiate an eligibility review, assessment/reassessment of services, reduce or terminate an existing service, deny or terminate a provider until *an NSA representative is identified, or the AAG agrees that the person is competent and no NSA representative is required.* Enter the reason for delay in the SER.
 - i. Continue current services until the NSA issue is resolved.
 - ii. If immediate emergency services are authorized, no action can be taken to reduce or terminate those services until an NSA representative is identified.
2. For DDD clients, write an accommodation plan in the person's service plan or SER.
- a. When the client has an NSA representative available to assist with accessing services, enter the representative's name and contact information in the Plan of Care/Individual Service Plan. The identification of an NSA representative is the accommodation plan.
 - b. For clients without an NSA representative and determined by the AAG as not requiring one, the NSA accommodations must be evaluated and addressed in the service plan or SER. Examples of accommodations include needing:
 - i. Someone to read and/or explain information;
 - ii. Written material in large print or another language; and

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

iii. Help understanding information and accessing services.

B. Applicants and clients will receive the following accommodations:

1. Help with completing and understanding forms and processes.
2. The PAN will be sent to the client and her/his representative in the person's primary language and in a manner that can be understood.
3. Prior to mailing any PAN, call the NSA representative or applicant/client and explain the decision, the PAN, and the appeal rights.

C. Persons Who Are Allen and Marr Class Members

The following procedures are in addition to A and B above:

1. Prior to sending any *Allen* or *Marr* class member a PAN, DDD will contact the WPAS Director of Legal Advocacy or his/her designee by telephone or email to inform him/her of the official department communication being sent to the class member.
 - a. WPAS will be the NSA representative if no else is available for class members residing in WSH or ESH, if the issue is DDD eligibility.
 - b. WPAS does not agree to be the NSA representative for any clients other than Allen/Marr class members who are not currently in WSH or ESH and whose eligibility is being reviewed.
2. When DDD sends a PAN to any *Allen* or *Marr* class member residing in a state hospital, the Case Resource Manager (CRM) will notify the DDD Mental Health CRM. The DDD Mental Health CRM will do all of the following:
 - a. Notify the appropriate Eastern State Hospital (ESH)/Western State Hospital (WSH) social worker in person or by telephone that the PAN is being mailed in care of an identified hospital staff representative.
 - b. Coordinate with the appropriate ESH/WSH social worker and hospital unit program manager to ensure that the class member's hospital treatment team is aware that the PAN is being sent. Also identify the hospital staff who will receive the PAN on behalf of the class member.
 - c. Be available as necessary to assist in the support of the class member receiving this important information.

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

- d. Work closely with the class member, his/her legal representative, WPAS, and other appropriate department staff providing services to the class member.

GOVERNING DSHS RULES AND DEFINITIONS

WAC 388-472-0010 What are necessary supplemental accommodation services (NSA)?

"Necessary supplemental accommodation (NSA) services are services provided to you if you have a mental, neurological, physical or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

NSA services include, but are not limited to:

- (1) Arranging for or providing help to complete and submit forms to us;
- (2) Helping you give or get the information we need to decide or continue eligibility;
- (3) Helping you request continuing benefits;
- (4) If you miss an appointment or deadline, contacting you about the reason before we reduce or end your benefits;
- (5) Explaining to you the reduction in or ending of your benefits;
- (6) If we know you have a person who helps you with your applications, notifying them when we need information or when we are about to reduce or end your benefits;
- (7) Assisting you with requests for fair hearings;
- (8) Providing protective payments if needed; and
- (9) On request, reviewing our decision to terminate, suspend or reduce your benefits."

WAC 388-472-0020(1) We identify you as "NSA" if you: (c) Have a developmental disability.

WAC 388-472-0040 What are the department's responsibilities in giving NSA services to me?

"All of our staff are continually responsible to identify you as possible NSA eligible and assist you with NSA services."

RCW 71A.10.060 (1) and WAC 388-825-100 require that when DDD gives notice to the person with a developmental disability that the notice also is given to at least one other person. The order of these persons by priority is listed in this RCW and WAC.

RCW 71A.10.060 (2) requires that notice to a person with a developmental disability be "given in a way that the person is best able to understand. This can include reading or explaining the materials to the person."

WAC 388-825-103 When will I receive written notice of decisions made by DDD?

You will receive written notice from DDD of the following decisions:

- (1) The denial or termination of eligibility;

TITLE: NECESSARY SUPPLEMENTAL ACCOMMODATION POLICY 5.02

- (2) The authorization, denial, reduction, or termination of services or the payment of SSP chapter 388-827 WAC that are authorized by DDD;
- (3) The admission or readmission to, or discharge from a residential habilitation center.

EXCEPTIONS

Regional Administrators or designees can approve exceptions to authorize an emergency service when there is no identified NSA representative.

SUPERSESSION

DDD Policy 5.02
Issued April 5, 2005

DDD Policy 5.02
Issued November 30, 2004

DDD Policy 5.02
Issued June 25, 2004

DDD Policy 5.02
Issued August 11, 2003

Approved: _____
Director, Division of Developmental Disabilities

Date: _____